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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,247	02/27/2004	Shan Lu	07917-190001 / UMMC 03-30	9906
26161	7590	10/06/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			SGAGIAS, MAGDALENE K	
			ART UNIT	PAPER NUMBER

1632

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,247

Applicant(s)

LU ET AL.

Examiner

Magdalene K. Sgagias

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-31 are pending.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19 drawn to a composition comprising a plurality of sets of nucleic acid molecules, each set encoding a different type of human cytomegalovirus (HCMV) polypeptide, and each molecule of a set encoding the same type of CMV polypeptide, wherein one or more sets of the plurality encodes a CMV polypeptide that induces a neutralizing antibody response, and one or more sets of the plurality encodes a CMV polypeptide that induces a cell-mediated immune response, classified in class 514, subclass 44.
- II. Claims 20-25, drawn to a method of eliciting an immune response against human cytomegalovirus (HCMV) in a subject, the method comprising administering to the subject an amount of a pharmaceutical composition effective to elicit an immune response against HCMV in a subject, classified in class 514, subclass 44.
- III. Claims 1, 7, 30, drawn to a kit comprising the composition of a plurality of sets of nucleic acid molecules each set encoding a different type of human cytomegalovirus (HCMV) polypeptide that induces a neutralizing antibody response, and each nucleic acid molecule of a set encoding the same type of HCMV polypeptide, and instructions for the administration of the composition to a subject in an amount effective to treat a CMV infection, classified in class 514, subclass 44.

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The compositions of the group I and III are patentably distinct each from the methods of the groups II because these methods cannot be used to produce the compositions.

Alternatively, the compositions may not be used in the methods or will be used in more than one method.

Therefore, the inventions of the groups I-III are patentably distinct each from the other and will require separate and non-coextensive searches in the patent and non-patent literature.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Magdalene K. Sgagias whose telephone number is (571) 272-3305. The examiner can normally be reached on Monday through Friday from 9:00 am to 5:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram R. Shukla, can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

Magdalene K. Sgagias, Ph.D.
Art Unit 1632


DEBORAH CROUCH
PRIMARY EXAMINER
GROUP 1800/1632